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Quorum Wins a Landmark Case

Chamber for Commercial Disputes of the Russian Supreme Court cancelled judicial acts previously issued by lower courts in Probusinessbank bankruptcy case and handed down the final judgement without ordering a retrial.

Quorum lawyers Adeliya Abdullina, Anastasia Zhidchenko, and Andrey Pavlov represented the bank filing a complaint with the Supreme Court. This controversial dispute sparked a significant interest of legal practitioners because it could have created a fundamental limitation of right to dispute a transaction by its party in case of subsequent assignment of its rights.

Probusinessbank's license was revoked by the Russian Central Bank on August 12, 2015. As of that date, the bank's liabilities to its depositors amounted approximately to RUB 25 bn with the total number of depositors estimated at 330 thsd.

Then, for the first time ever, a decision was reached to transfer liabilities to all depositors to another major bank and to pay for these liabilities using the bank's assets. BINBANK won the tender and fully repaid all amounts owed to Probusinessbank's depositors.

However, it turned out that BINBANK also received the rights of claim to Avilon AG, which claimed, one day prior to the revocation, that it had set off claims under its loan with Probusinessbank with rights of claim to the bank obtained in advance from other companies.

Consequently, a bankruptcy manager of the bank – the Deposit Insurance Agency – took a legal action to invalidate this unlawful set-off.

Commercial Arbitration Court of Moscow, the Ninth Commercial Arbitration Court of Appeal, and the Commercial Arbitration Court of Moscow District did not uphold the Probusinessbank's opinion and refused to invalidate the set-off. Precisely, the courts of three judicial levels found that the DIA lost its right to dispute the transaction to which the bank was a party after the bankruptcy manager assigned the rights under Avilon AG's loan.

The Supreme Court upheld the bankruptcy manager's opinion and reversed this dangerous precedent created by the lower courts by restoring Avilon AG's debt under the credit contract in the amount of RUB 89 mn.

For more information, see http://kad.arbitr.ru/PdfDocument/fb36a410-bbaf-475b-b6d7-57f575c889d2/A40-154909-2015_20170515_Reshenija_i_postanovlenija.pdf

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